

## **Section 11 - Miscellaneous Agreement Provisions**

### **11-1. Warranty Of Services. [old D11-1]**

#### **11-1.1. Acceptance And Correction. [old D11-1]**

##### **11-1.1.1. Definitions. [old D11-1]**

###### **11-1.1.1.1. Acceptance. [old D11-1]**

Acceptance, as used in this HTOS Paragraph, means the act of an authorized representative of the Government by which the Government assumes for itself or approves specific services, as partial or complete performance of the HTOS.

###### **11-1.1.1.2. Correction. [old D11-1]**

Correction, as used in this clause, means the elimination of a defect.

###### **11-1.1.2. Warranty. [old D11-1]**

Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the participant warrants that all services performed under this HTOS will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this HTOS. The RTO shall give written notice of any defect or nonconformance to the participant within forty-five (45) days from the date of acceptance by the Government. This notice shall state either (1) that the participant shall correct or reperform any defective or nonconforming services, or (2) that the Government does not require correction or reperformance.

###### **11-1.1.3. Correction And Reperformance. [old D11-1]**

If the participant is required to correct or reperform, it shall be at no cost to the Government, and any services corrected or reperformed by the participant shall be

subject to this clause or if the participant refuses to correct or reperform, the RTO may correct or replace with similar services and charge to the participant the cost occasioned to the Government thereby, or make an equitable adjustment in the price for services rendered.

**11-1.1.4. No Correction And Reperformance. [old D11-1]**

If the Government does not require correction or reperformance, the RTO shall make an equitable adjustment in the price for services rendered.

**11-1.2. Improper Customs Clearance Reduction. - International Only.**

**[old 11.1.2]**

In the event that a carrier improperly clears a shipment through customs (for example, a shipment is cleared as a DoD shipment, rather than a DOS shipment) and warehouse handling, storage, or delivery costs accrue exceeding those applicable to the shipment had the shipment been properly cleared, the excess warehouse handling, storage, or delivery costs will not be reimbursable by the Federal agency paying the transportation charges.

**11-1.3. Late Delivery Reduction. - DOMESTIC ONLY. [old D11-1]**

A late delivery reduction of \$100.00 per day will be payable to the Federal agency paying the transportation charges, for each calendar day or fraction thereof, when the actual transit time for direct delivery shipments exceeds the transit time as defined in Section 12 of this HTOS, subject to the following items: (1) When the Government and the participant mutually agree to a transit time longer than the transit time as shown in this HTOS, the penalty will begin on the day after the agreed date; (2) When the Government and the participant mutually agree to a transit time chart other than the chart in this HTOS, the penalty will begin on the day after the agreed date; (3) When a shipment

consigned to Storage-in-Transit (SIT) at destination is en route and the destination is changed to a direct delivery, the transit time is negotiable and no penalty occurs for late delivery; (4) This item will apply only for shipments which: (a) weigh or are rated at 3,500 pounds or more that are picked up during the period from October 1 through May 14 of each subsequent year; OR. (b) weigh or are rated at 5,000 pounds or more that are picked up during the period from May 15 through September 30 of each year; (5) This item applies only when both origin and destination of the shipment are within the continental United States; (6) This item will not apply if delay is caused by reasons beyond the participant's control, described as "Impractical Operation" in the participant's governing Government Rate Tender; (7) This item will not apply to a shipment, or portion thereof, which is lost or destroyed in transit and cannot be delivered due to such loss or destruction; (8) This item will not apply to an overflow portion of the shipment when the overflow weight represents less than twenty (20) percent of the total shipment weight and contains nonessential items (possessions not needed to maintain day-to-day housekeeping during the period of time between delivery of the main portion of the shipment and delivery of the overflow); (9) This item will apply when reconsignment or diversion is made on a shipment, based on the applicable mileage and weight of the shipment from point of diversion to the new destination; (10) The total reimbursement shall not exceed an amount equal to the linehaul transportation charges for the shipment; (11) This payment satisfies the Government's right to equitable adjustment for failure to perform, but does not waive, mitigate, or satisfy any other right or remedy available to the Government on account of late delivery by the participant.

**11-1.4. Late Delivery Reduction. - INTERNATIONAL ONLY. [old I11.1.3]**

A late delivery reduction of \$100.00 per day will be payable to the Federal agency paying the transportation charges, for each calendar day or fraction thereof, when the actual transit time for direct delivery shipments exceeds the transit time as defined in Section 12 of this HTOS, subject to the following items: (1) When the Government and the participant mutually agree to a transit time longer than the transit time as shown in this HTOS, the penalty will begin on the day after the agreed date; (2) When the Government and the participant mutually agree to a transit time chart other than the chart in this HTOS, the penalty will begin on the day after the agreed date; (3) When a shipment consigned to Storage-in-Transit (SIT) at destination is en route and the destination is changed to a direct delivery, the transit time is negotiable and no penalty occurs for late delivery; (4) This item will apply only for shipments which: (a) weigh or are rated at 3,500 pounds or more that are picked up during the period from October 1 through May 14 of each subsequent year; OR. (b) weigh or are rated at 5,000 pounds or more that are picked up during the period from May 15 through September 30 of each year; (5) This item will not apply if delay is caused by reasons beyond the participant's control, described as "Impractical Operation" in the participant's governing Government Rate Tender; (6) This item will not apply to a shipment, or portion thereof, which is lost or destroyed in transit and cannot be delivered due to such loss or destruction; (7) This item will not apply to an overflow portion of the shipment when the overflow weight represents less than twenty (20) percent of the total shipment weight and contains nonessential items (possessions not needed to maintain day-to-day housekeeping during the period of time between delivery of the main portion of the shipment and delivery of the overflow); (8) This item will apply when reconsignment or diversion is made on a

shipment, based on the applicable mileage and weight of the shipment from point of diversion to the new destination; (9) The total reimbursement shall not exceed an amount equal to total charges for the shipment, excluding SIT; (10) This payment satisfies the Government's right to equitable adjustment for failure to perform, but does not waive, mitigate, or satisfy any other right or remedy available to the Government on account of late delivery by the participant.

**11-2. Diversion Or Reconsignment. [old D11-3]**

Diversion or reconsignment of a shipment to a destination area other than that specified on the GBL can only be authorized by written order or oral notice followed by written order of the GBL Issuing Officer. The destination area is the territory recognized as the commercial zone for the destination city or municipality shown on the GBL. Instructions furnished by the owner or his representative to the carrier or its agent to perform local drayage to any point within the commercial zone shall not constitute an order for diversion or reconsignment.

**11-3. Advertising Of Participant Approval. [old D11-4 & I11.3]**

Except in those instances where the participant uses information or data publicly available, the participant will not refer to GSA approval to participate in the program or participation in the program in commercial advertising in such a manner as to state or imply that the services provided are endorsed or preferred by the Federal Government or are considered by the Government to be superior to other services.